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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/977,151 | 10/12/2001 | Brian M. Adams | A-70895/RBC/VEJ | 3896 |

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| | |
|-----------------------|--------------|
| EXAMINER | |
| HYLTON, ROBIN ANNETTE | |
| ART UNIT | PAPER NUMBER |
| 3727 | |

DATE MAILED: 12/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/977,151

Applicant(s)

ADAMS, BRIAN M.

Examiner

Robin Hylton

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-5 and 13-23 is/are allowed.
- 6) ☒ Claim(s) 6-10 is/are rejected.
- 7) ☒ Claim(s) 11 and 12 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Claim Objections

1. Claim 18 is objected to because of the following informalities: "said" has been omitted in line 1 before "horizontally". Appropriate correction is required.

Specification

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: "said straight segment extends as an acute angle with respect to said frangible membrane".

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 6 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Galley (CA 685,952).

As seen in the drawing figures, straight member 16 extends at an acute angle with respect to the frangible membrane 13. The angle appears to be approximate 45°.

5. Claims 6 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Laurizio (US 3,458,080).

A spout extends upwardly from flange 5 and has a frangible membrane 20 with a straight member 23 extending at an acute angle with respect to the frangible membrane. Viewing drawing figures 1 and 8, the angle is seen as being between 15° and 45°.

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6. Claims 6 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Goth (US 3,269,617).

See figure 3.

7. Claim 10 is rejected under 35 U.S.C. 102(b) as being anticipated by Dwinell (US 4,022,357).

See figure 1.

8. Claim 10 is rejected under 35 U.S.C. 102(b) as being anticipated by Guglielmini et al. (US 5,301,849).

See figure 2.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Galley.

Galley discloses the claimed invention except for the angle of inclination being 30°. It would have been obvious to one having ordinary skill in the art at the time the invention was made to the angle of inclination any acute angle including 30°, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

11. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Galley in view of Wise et al (US 3,135,441).

Galley teaches the claimed fitment except for a rib extending from a surface of the straight segment adjacent the terminal end thereof.

Wise teaches it is known to provide a rib adjacent a terminal end of a gripping member.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a rib extending from a surface of the gripping member terminal end. Doing so allows a good frictional grip for the user to grasp and pull the gripping member upon tearing the frangible membrane.

12. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goth.

Goth discloses the claimed invention except for the angle of inclination being 30°. Goth discloses the claimed invention except for the angle of inclination being 30°. It would have been obvious to one having ordinary skill in the art at the time the invention was made to the angle of inclination any acute angle including 30°, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

13. Claim 8 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Laurizio.

Wherein the drawing figures appear to disclose an angle of inclination of 30°, but the specification is silent, it would have been obvious to one having ordinary skill in the art at the time the invention was made to the angle of inclination any acute angle including 30°, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

14. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Adams et al. in view of Guglielmini et al. (US 5,301,849).

Adams teaches the claimed fitment except for a portion of the horizontally extending member being above the upper end of the spout.

Guglielmini teaches it is known to provide a portion of the horizontally extending member being above the upper end of the spout.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a portion of the horizontally extending member being above the upper end of the spout. Doing so allows for easier grasping of the gripping member as desired to break the frangible membrane.

Allowable Subject Matter

15. Claims 1-5 and 13-23 are allowed over the art of record.
16. Claims 11 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various closures having frangible membranes similar to that disclosed and/or claimed are cited of interest.
18. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 305-3579. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.
19. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

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I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 305-3579 on the date shown below:

Typed or printed name of person signing this certificate

Signature_____

Date_____

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner works a flexible schedule, but can normally be reached on Monday - Friday from 8:30 a.m. to 1:30 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (703) 308-2572.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bemby at (703) 306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

RAH
December 09, 2002


Robin A. Hylton
Patent Examiner
GAU 3727